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INTERSTATE COMMERCE COMMISSION

**LEASE OF RAILROAD EQUIPMENT**

**Dated as of January 1, 1971**

**between**

**SOO LINE RAILROAD COMPANY,**

**and**

**FIRST TRUST COMPANY OF SAINT PAUL,  
as Trustee**

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**LEASE OF RAILROAD EQUIPMENT** dated as of January 1, 1971, between SOO LINE RAILROAD COMPANY, a Minnesota corporation (hereinafter called the Lessee) and FIRST TRUST COMPANY OF SAINT PAUL, a Minnesota corporation (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of January 1, 1971 (hereinafter called the Trust Agreement), with The First National Bank of Saint Paul.

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of January 1, 1971 (hereinafter called the Security Document), with THRALL CAR MANUFACTURING COMPANY (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interest in the Security Document to THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document on or prior to April 30, 1971 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Document as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease, except that the term "Security Documents" as used therein shall be deemed to mean the Security Document.


§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarter-annual payments, payable on the business day next preceding February 1, May 1, August 1 and November 1 in each year commencing with the business day next preceding May 1, 1971. The first such payment shall be in an amount equal to 0.02847% of the Purchase Price (as such term is defined in the Security Document pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Security Document to May 1, 1971 plus 2.6900% of the Purchase Price of each Unit subject to this Lease on the date of such payment; the next 59 quarter-annual payments shall each be in an amount equal to 2.6900% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o The First Pennsylvania Banking and Trust Company, 15th and Chest-

nut Streets, Philadelphia, Pennsylvania 19101. On or before the date upon which payments to the Vendor under the Security Document are due and owing, The First Pennsylvania Banking and Trust Company is hereby authorized to apply funds received hereunder in Federal funds to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreement and Assignment between the Builder and the Vendor, dated as of January 1, 1971, under which the Security Document is being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document accrued at the time such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be immediately paid to the Lessor by wire transfer in accordance with its direction.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization



of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms thereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7 and 10 hereof, shall terminate three months after the date on which the final quarter-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under

this Lease or under the Security Document. If a Declaration of Default (as defined in the Security Document) should be made under the Security Document due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Security Document as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 17 of the Security Document that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof except that said Section is amended by adding the following proviso at the end of the first paragraph thereof:

“*provided, further,* that the Lessor shall not pay any such impositions without first obtaining the written consent of the Lessee.”

Said Section is further amended by adding the following proviso at the end of the second paragraph thereof:

“*provided, however,* that the Lessee shall be under no obligation to pay any such impositions so long as it wishes to contest such impositions at its own expense in good faith by appropriate legal proceedings.”

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen,

destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 .....	103.45205%	14 .....	97.03389%
2 .....	103.53173	15 .....	95.98001
3 .....	103.51514	16 .....	94.85779
4 .....	103.40124	17 .....	93.66677
5 .....	103.18817	18 .....	92.40590
6 .....	102.87405	19 .....	91.07453
7 .....	102.45722	20 .....	89.67187
8 .....	101.93599	21 .....	88.19715
9 .....	101.30849	22 .....	86.70364
10 .....	100.58373	23 .....	85.19072
11 .....	99.79481	24 .....	83.65844
12 .....	98.94058	25 .....	82.10623
13 .....	98.02051	26 .....	80.53377

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
27 .....	78.94097%	45 .....	46.35554%
28 .....	77.32736	46 .....	44.30218
29 .....	75.69252	47 .....	42.22012
30 .....	74.03624	48 .....	40.10911
31 .....	72.35815	49 .....	37.96854
32 .....	70.65793	50 .....	35.79763
33 .....	68.93506	51 .....	33.59630
34 .....	67.18929	52 .....	31.36368
35 .....	65.42018	53 .....	29.09918
36 .....	63.62713	54 .....	26.80249
37 .....	61.81022	55 .....	24.47289
38 .....	59.96871	56 .....	22.10978
39 .....	58.10234	57 .....	19.71254
40 .....	56.21045	58 .....	17.28059
41 .....	54.29288	59 .....	15.00000
42 .....	52.34906	60 .....	15.32465
43 .....	50.37849	and there-	
44 .....	48.38093	after	

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:



A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have

the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof/or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units

may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a  $6\frac{1}{2}\%$  per annum discount, compounded quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United

States of America or any political subdivision hereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profits tax rates generally applicable to or imposed upon corporations incorporated under the laws of the State of Minnesota, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the amortization deduction with respect to a Unit provided for in section 184 of the Internal Revenue Code, as amended (hereafter called the Rapid Amortization Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 10 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by

the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the Rapid Amortization Deduction available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the second paragraph of § 17 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof except that subparagraph (b) of the first paragraph thereof is deleted and replaced with the following:

“(b) permit the Lessor to store such Units on such tracks at the risk of the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor; and”

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof except that the last two sentences of the first paragraph thereof shall be deleted and replaced with the following:

“All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the beneficiary of the Lessor if Lessor is a trust and to the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such beneficiary or assignee of the Lessor and, where the context so requires (including but not limited to certain of the provisions of § 17 of this Lease), shall refer only to such beneficiary or assignee.”

and except that there shall be added at the end of the last paragraph thereof a further proviso reading as follows:

“, and, *provided, further*, that immediately after such consolidation, merger or acquisition, such assignee or transferee shall have a net worth which shall not be less than the net worth of the Lessee immediately before such consolidation, merger or acquisition”.

§ 13. *Purchase Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease, elect to purchase all, but not fewer than

all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming

by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof except that the last paragraph thereof is deleted and replaced with the following:

"In addition to the expenses provided for in Article 20 of the Security Document, the Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel."

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 10 of this Lease), with respect to the Units.



If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates as defined in § 10 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease (taxes being calculated at the Assumed Rates) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates) that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction; *provided, however,* that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Rapid Amortization Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor (other than by the assignment of this Lease to the Vendor) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Security Document or of the assignment of this Lease to the Vendor without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Rapid Amortization Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Deduction; or

(v) the failure of the Lessor to have sufficient income to benefit from the Rapid Amortization Deduction.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable

to the Rapid Amortization Deduction disallowed, computed at the rate of  $10\frac{1}{4}\%$  per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to  $11\frac{1}{4}\%$  per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 332 Minnesota Street, St. Paul, Minnesota 55101; and

(b) if to the Lessee, at Soo Line Building, Minneapolis, Minnesota 55440,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

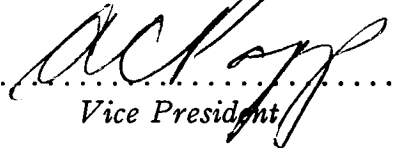
The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2, 6 or 7 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of January 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

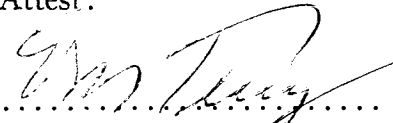
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

FIRST TRUST COMPANY OF SAINT PAUL,  
as Trustee under a Trust Agreement  
dated as of January 1, 1971,

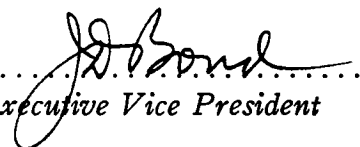
by ..  ..  
Vice President

[ CORPORATE SEAL ]

Attest:

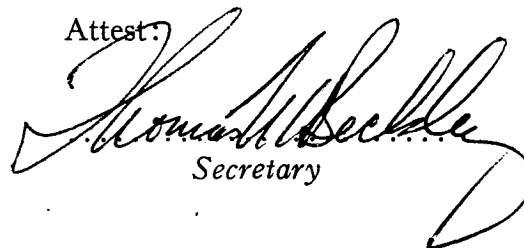
 ..  
Assistant Secretary

SOO LINE RAILROAD COMPANY,

by ..  ..  
Executive Vice President

[ CORPORATE SEAL ]

Attest:

 ..  
Secretary

STATE OF MINNESOTA }  
COUNTY OF HENNEPIN } ss.:

On this 26<sup>th</sup> day of JANUARY, 1971, before me personally appeared J. D. Bond, to me personally known, who, being by me duly sworn, says that he is the Executive Vice President of SOO LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Edwin G. Watts*  
.....

Notary Public

EDWIN G. WATTS

Notary Public, Hennepin County, Minn.  
My Commission Expires Oct. 10, 1973.

[NOTARIAL SEAL]

STATE OF MINNESOTA }  
COUNTY OF RAMSEY } ss.:

On this 25<sup>th</sup> day of January, 1971, before me personally appeared A. C. Popp, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST TRUST COMPANY OF SAINT PAUL, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Diane Wagner*  
.....

Notary Public

DIANE WAGNER,

Notary Public, Ramsey County, Minn.  
My Commission Expires Oct. 5, 1977

[NOTARIAL SEAL]

# SCHEDULE A

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (odd numbers only, inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100-ton covered hopper cars	Specification No. 8C 100-48-122. Specialty list dated 9/14/70 as amended.	Chicago Heights, Illinois	200	72451-72849	\$16,046.90	\$3,209,380	February-April 30, 1971 at Schiller Park, Illinois
100-ton covered hopper cars	Specification No. 8C 100-48-122. Specialty list dated 9/14/70 as amended.	Chicago Heights, Illinois	100	72851-73049	\$16,507.90	\$1,650,790	February-April 30, 1971 at Schiller Park, Illinois